officials have some immunity—absolute or qualified—for their acts, is a recognition that they may err. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all. In *Barr* v. *Matteo*, 360 U. S. 564, 572–573 (1959), the Court observed, in the somewhat parallel context of the privilege of public officers from defamation actions, "[T]he privilege is not a badge or emolument of exalted office, but an impression of a policy designed to aid in the effective functioning of government." See also *Spalding* v. *Vilas*, 161 U. S. 483, 498–499 (1896).

For present purposes we need determine only whether there is an absolute immunity, as the Court of Appeals determined, governing the specific allegations of the complaint against the Chief Executive Officer of a State, the senior and subordinate officers and enlisted personnel of that State's National Guard, and the President of a state-controlled university. If the immunity is qualified, not absolute, the scope of that immunity will necessarily be related to facts as yet not established either by affidavits, admissions or a trial record. Final resolution of this question must take into account the functions and responsibilities of these particular defendants in their capacities as officers of the state government, as well as the purposes of 42 U. S. C. § 1983. In neither of these inquiries do we write on a clean slate. It can hardly be

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curiam, 275 U. S. 503 (1927). In *Spalding* v. *Vilas*, 161 U. S. 483, 498, the Court noted:

"In exercising the functions of his office, the head of an Executive Department, keeping within the limits of his authority, should not be under an apprehension that the motives that control his official conduct may, at any time, become the subject of inquiry in a civil suit for damages. It woud seriously cripple the proper and effective administration of public affairs as entrusted to the executive branch of the government, if he were subjected to any such restraint."

argued, at this late date, that under no circumstances can the officers of state government be subject to liability under this statute. In *Monroe* v. *Pape*, 365 U. S. 167 (1961), MR. JUSTICE DOUGLAS, writing for the Court, held that the section in question was meant "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of position." *Id.*, at 172. Through the Civil Rights statutes, Congress intended "to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it." *Id.*, at 171–172.

Since the statute relied on thus included within its scope the "'[m]isuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *Id.*, at 184 (quoting *United States* v. *Classic*, 313 U. S. 299, 326), government officials, as a class, could not be totally exempt, by virtue of some absolute immunity, from liability under its terms. Indeed, as the Court also indicated in *Monroe* v. *Pape*, *supra*, the legislative history is to the contrary. Soon after *Monroe* v. *Pape*, Mr. Chief Justice Warren noted in *Pierson* v. *Ray*, 386 U. S. 547 (1967), that the "legislative record [of § 1983] gives no clear indication that Congress meant to abolish wholesale all common-law immunities," *id.*, at 554. The Court had previously recognized that Civil Rights Act of 1871 does not create civil liability for legislative acts by legislators "in a field where legislators traditionally have the power to act." *Tenney* v. *Brandhove*, 341 U. S. 367, 379 (1951). Noting that "[t]he privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggles of

the Sixteenth and Seventeenth Centuries," *id.*, at 372, the Court concluded that it was highly improbable that ". . . Congress itself a staunch advocate of legislative freedom would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language . . ." *id.*, at 376, of this statute.

In similar fashion, *Pierson* v. *Ray*, *supra*, examined the scope of judicial immunity under this statute. Noting that the record contained no "proof or specific allegation," *id.*, at 553, that the trial judge had "played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court," *ibid.*, the Court concluded that, had the Congress intended to abolish the common law "immunity of judges for acts within the judicial role," *id.*, at 554, it would have done so specifically. A judge's

> "errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on a judge would contribute not to principled and fearless decisionmaking but intimidation." 386 U. S., at 554.

The *Pierson* Court was also confronted with whether immunity was available to that segment of the executive branch of a state government that is most frequently and intimately involved in day-to-day contacts with the citizenry and, hence, most frequently exposed to situations which can give rise to claims under § 1983—the local police officer. Chief Justice Warren speaking for the Court, noted that the police officers

> "did not defend on the theory that they believed in good faith that it was constitutional to arrest the ministers solely for using the ['white only'] waiting

> room. Rather, they claimed and attempted to prove that . . . [they arrested] solely for the purpose of preventing violence. They testified, in contradiction to the ministers, that a crowd gathered and that imminent violence was likely. If the jury believed the testimony of the officers and disbelieved that of the ministers, and if the jury found that the officers reasonably believed in good faith that the arrest was constitutional, then a verdict for the officers would follow even though the arrest was in fact [without probable cause and] unconstitutional." *Id.*, at 557.

The Court noted that the "common law had never granted police officers an absolute and unqualified immunity," *id.*, at 555, but that "the prevailing view in this country [is that] a peace officer who arrests someone with probable cause is not liable for a false arrest simply because the innocence of the suspect is later proved," *ibid.*; the Court went on to observe that a "policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does." *Ibid.* The Court then held:

> "that the defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under § 1983." 386 U. S., at 557.

When a court evaluates police conduct relating to an arrest its guideline is "good faith and probable cause." *Ibid.* In the case of higher officers of the executive branch, however, the inquiry is far more complex since the range of decisions and choices—whether the formulation of policy, of legislation, of budgets, or of day-to-day de-

cisions—is virtually infinite. In common with police officers, however, officials with a broad range of duties and authority must often act swiftly and firmly at the risk that action deferred will be futile or constitute virtual abdication of office. Like legislators and judges, these officers are entitled to rely on traditional sources for the factual information on which they decide and act.[8] When a condition of civil disorder in fact exists, there is obvious need for prompt action and decisions must be made in reliance on factual information supplied by others. While both federal and state laws plainly contemplate the use of force when the necessity arises, the decision to invoke military power has traditionally been viewed with suspicion and skepticism since it often involves the temporary suspension of some of our most cherished rights—government by elected civilian leaders, freedom of expression, of assembly and association. Decisions in such situations are more likely than not to arise in an atmosphere of confusion, ambiguity, and swiftly moving events and when, by the very existence of some degree of civil disorder, there is often

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[8] In *Spalding* v. *Vilas*, 161 U. S. 483, 498 (1896), the Court, after discussing the early principles of judicial immunity in the country, cf. *Randall* v. *Brigham*, 7 Wall. 523, 535 (1868), *Bradley* v. *Fisher*, 13 Wall. 335 (1871), and *Yates* v. *Lansing*, 5 Johns. 282, noted the similarity in the controlling policy considerations in the case of high echelon executive officers and judges:

"We are of opinion that the same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions, apply to a large extent to official communications made by heads of Executive Departments when engaged in the discharge of duties imposed upon them by law. The interests of the people require that due protection be accorded to them in respect of their official acts."

no consensus as to the appropriate remedy. In short, since the options which a chief executive and his principal subordinates must consider are far broader and far more subtle than those made by officials with less responsibility, the range of discretion must be comparably broad. In a context other than a § 1983 suit, Mr. Justice Harlan articulated these considerations in *Barr* v. *Matteo, supra:*

> "To be sure, the occasions upon which the acts of an executive department will be protected by the privilege are doubtless far broader than in the case of an officer with less sweeping functions. But that is because the higher the post, the broader the range of responsibilities and duties, and the wider the scope of discretion it entails. It is not the title of his office but the duties with which the particular officer sought to be made to respond in damages is entrusted—the relation of the act complained of 'to matters committed by law to his control or supervision,' *Spalding* v. *Vilas, supra,* at 498—which must provide the guide in delineating the scope of the rule which clothes the official acts of the executive officer with immunity from civil defamation suits." 360 U. S., at 573–574.

These considerations suggest that, in varying scope, a qualified immunity is available to officers of the executive branch of Government, the variation dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good faith belief,

that affords basis for qualified immunity of executive officers for acts performed in the course of official conduct. Mr. Justice Holmes spoke of this, stating:

> "No doubt there are cases where the expert on the spot may be called upon to justify his conduct later in court, notwithstanding the fact he had sole command at the time and acted to the best of his knowledge. That is the position of the captain of a ship. But even in that case great weight is given to his determination and the matter is to be judged on the facts as they appeared then and not merely in the light of the event." (Citations omitted.) *Moyer* v. *Peabody*, 212 U. S. 78, 85 (1909).

Under the criteria developed by precedents of this Court, § 1983 would be drained of meaning were we to hold that the acts of a governor or other high executive officer has "the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government." *Sterling* v. *Constantin*, 287 U. S. 378, 397 (1932). In *Sterling*, Chief Justice Hughes put it in these terms:

> "If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the State may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity. Under our system of government, such a conclusion is obviously untenable. There is no such

avenue of escape from the paramount authority of the Federal Constitution. When there is a substantial showing that the exertion of state power has overridden private rights secured by that Constitution, the subject is necessarily one for judicial inquiry in an appropriate proceeding directed against the individuals charged with the transgression." 287 U. S., at 397–398.

Gilligan v. *Morgan, supra,* by no means indicates a contrary result. Indeed, there, we specifically noted that we neither held nor implied "that the conduct of the National Guard is always beyond judicial review or that there may not be accountability in the judicial forum for violations of law or for specific unlawful conduct by military personnel whether by way of damages or injunctive relief." 413 U. S. 1, 11–12 (1973). (Footnote omitted). See generally *Laird* v. *Tatum,* 408 U. S. 1, 15–16 (1972); *Duncan* v. *Kahanamaku,* 327 U. S. 304 (1946).

IV

This case, in its present posture, presents no occasion for a definitive exploration of the scope of immunity available to state executive officials nor, because of the absence of a factual record, does it permit a determination as to the applicability of the foregoing principles to the respondents here. The District Court acted before an answer was filed and without any evidence other than the copies of the proclamations issued by Respondent Rhodes and brief affidavits of the Adjutant General and his assistant. In dismissing the complaints, the District Court and the Court of Appeals erroneously accepted as a fact the good faith of the Governor, and took judicial notice that "mob rule existed at Kent State University." There was no opportunity afforded petitioners to contest the facts assumed in that conclusion. There was no

evidence before the Court from which such a finding of good faith could be properly made and, in the circumstances of these cases, such a dispositve conclusion could not be judicially noticed. We can readily grant that a declaration of emergency by the chief executive of a State is entitled to great weight but it is not conclusive. *Sterling* v. *Constantin, supra.*

The documents properly before the District Court at this early pleading stage specifically placed in issue whether the Governor and his subordinate officers were acting within the scope of their duties under the Constitution and laws of Ohio; whether they acted within the range of discretion permitted the holders of such office under Ohio law and whether they acted in good faith both in proclaiming an emergency and as to the actions taken to cope with the emergency so declared. Similarly, the complaint places directly in issue whether the lesser officers and enlisted personnel of the Guard acted in good faith obedience to the orders of their superiors. Further proceedings, either by way of summary judgment or by trial on the merits, are required. The complaining parties are entitled to be heard more fully than is possible on a motion to dismiss a complaint.

We intimate no evaluation whatever as to the merits of the petitioners' claims or as to whether it will be possible to support them by proof. We hold only that, on the allegations of their respective complaints, they were entitled to have them judicially resolved.

The judgments of the Court of Appeals are reversed and remanded for further proceedings consistent with this opinion.

MR. JUSTICE DOUGLAS took no part in the decision of this case.